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SENSITIVE
SIPDIS, COMMERCE FOR JENNIFER BOGER

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SUBJECT: TALKING POINTS ON COPYRIGHT LEGISLATION FOR USE WITH GOC
OFFICIALS

REF: OTTAWA 644

USTR FOR JOHN RODRIGUEZ

Per request reftel, there follow interagency-cleared talking points for Embassy to deliver to appropriate senior Canadian officials to encourage them to introduce quickly legislation to modernize Canada's copyright regime.

Begin Talking Points:

-- The U.S. Government appreciates the high level of cooperation between our two Governments in many important bilateral and multilateral IPR initiatives, including through the World Trade Organization, the World Intellectual Property Organization and the negotiations for the proposed Anti-Counterfeiting Trade Agreement.

-- The USG welcomes Canada's repeated commitments to improve IPR protection and enforcement.

-- However, we are hopeful that Canada's previously expressed commitments ultimately turn into results, especially in the area of improved copyright protection.

-- Indeed, as 12 years have passed since Canada signed (signed in 1997) both the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty (collectively, the WIPO Internet Treaties), we strongly encourage Canada to act on its prior commitments by promptly enacting effective copyright legislation to properly and fully implement these treaties.

-- Although Canada has made progress towards increasing the protection of IPR -- most notably with the 2007 anti-camcording law -- the USG is disappointed that Canada has made little progress on modernizing its copyright law to implement the WIPO Internet Treaties.

-- As you are fully aware, this was one reason why Canada was elevated to Priority Watch under the 2009 Special 301 Review.

-- The USG is pleased to see the large amount of time and energy that your Ministry has invested in the copyright consultations taking place this summer. We hope that upon the conclusion of these consultations you will move quickly to introduce effective copyright legislation.

-- As we have previously shared, the USG believes that effective copyright legislation accounting for modern and changing technology would include:

Prohibition of manufacturing and trafficking in technological protection measure (TPM) circumvention devices as an offense separate from copyright infringement;

Prohibition of circumvention of TPMs that control access to

works (quote access controls unquote);

Deterrent penalties against unauthorized circumvention --
both civil and criminal;

If there are any exceptions to TPM or rights management
information (RMI) liability, the exceptions should be clearly
enumerated and narrow in scope;

A system of protections and obligations for ISPs that
shelters them from certain liability, reduces and prevents
copyright infringement on the Internet and provides
incentives for ISPs to work cooperatively with copyright
owners.

-- Overall, the bill should strengthen the current level of
copyright protection and enforcement in Canada.

-- Ambassador Ron Kirk, the United States Trade
Representative, remains keenly interested in this issue.

-- (If needed) As Ambassador Kirk indicated in April, USTR is
prepared to reopen the USG interagency process to reassess
Canada,s placement on the Special 301 list if Canada enacts
adequate legislation.

End Talking Points.
CLINTON